

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ADAM R. HOUSER,	:	Case No. 5:04CV1655
	:	
Petitioner,	:	JUDGE KATHLEEN O'MALLEY
	:	
v.	:	
	:	<u>MEMORANDUM AND ORDER</u>
ATTORNEY GENERAL OF THE	:	
STATE OF OHIO	:	
	:	
Respondent.	:	

On August 18, 2004, Adam Houser ("Houser") filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Docket #1). According to Local Rule 72.2(b)(2), this matter was sent to Magistrate Judge Hemann for a report and recommendation. Houser is in the custody of the Ohio Department of Rehabilitation and Correction pursuant to a journal entry of sentence in the case of *State of Ohio v. Houser*, Case No. CR-01-02-0414 (Summit County 2001). The magistrate judge recommends that Houser's first two grounds of relief be **STAYED** while his third and fourth grounds of relief be **DISMISSED** without prejudice for failure to exhaust state remedies. Neither party filed objections.¹

¹ Failure by the parties to file timely objections with this Court to the magistrate judge's report and recommendation operates as a waiver for a subsequent review in the court of appeals. *See United States v. Walters*, 638 F.2d 947, 950 (1981).

Having conducted a *de novo* review of the record in this case, the Court agrees with the magistrate judge's recommendation that Houser be given an opportunity to exhaust his unexhausted claims without losing his right to pursue his remaining claims. For administrative purposes, however, the Court sees no reason to maintain this action on its active docket while it awaits state-court review. Accordingly, this matter is **DISMISSED** without prejudice, subject to reopening upon the motion of either party, with the statute of limitations on petitioner's exhausted grounds being stayed pending reopening. This Order is conditioned on Houser's obligation to return to state court to file a delayed appeal relating to his third and fourth grounds for relief within thirty (30) days. Houser shall then have thirty (30) days after the final state-court ruling on his third and fourth grounds for relief to file a motion to reopen this action.

IT IS SO ORDERED.

s/Kathleen M. O'Malley

**KATHLEEN McDONALD O'MALLEY
UNITED STATES DISTRICT JUDGE**

Dated: August 5, 2005